

**Napa County Juvenile Court's Protocol  
Regarding Juvenile Competency to Stand Trial  
2019**

Welfare and Institutions Code §709<sup>1</sup> sets forth the basic procedures to follow when minor's counsel or the court expresses a doubt as to a minor's competency to stand trial (JCST). Under §709, a minor is incompetent to stand trial "if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. Incompetency may result from the presence or any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity."

This protocol implements §709, as amended by AB 1214, for the Napa County Juvenile Court.

**A. Informal Resolution**

Informal resolution of JCST cases is often better for the minor and for the protection of public safety. Informal resolution allows the youth to avoid protracted litigation, including many days of missed school attending court hearings, evaluations and remediation sessions, as well as days of missed work for parents. Informal resolution also allows a minor to earn an early dismissal of the petition. Informal resolution protects the public by providing early intervention to address the underlying reasons for a minor's criminal behavior. Therefore, in cases where JCST is likely to be an issue<sup>2</sup>, and where the public's safety is not jeopardized, the court and counsel should explore resolving the matter before a doubt is raised and without initiating formal competency proceedings.

Informal resolution may include the voluntary participation of a minor and family in community-based programs which may provide counseling and supervision. If this intervention addresses the needs of the minor and advances public safety, then the court should consider diverting the case with the promise of dismissal under §782.

If the court believes that informal probation supervision would be helpful to keep a minor from re-offending, it may consider granting §654.2 supervision. This option should only be considered for minors who are eligible for §654.2 supervision and are capable of consenting to the terms of §654.2 supervision.

**B. Formal JCST Proceedings**

During the pendency of juvenile proceedings, minor's counsel or the court may express a doubt as to a minor's competency. If the court finds substantial evidence raises a doubt as to the minor's competency, the court shall suspend proceedings.

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<sup>1</sup> All statutory references are to the California Welfare and Institutions Code unless otherwise noted.

<sup>2</sup> The minor may, for example, be a Regional Center client or have a documented history of mental illness.

Unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, once the court suspends proceedings, it shall appoint an expert, pursuant to Evidence Code § 730, to evaluate and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity or other condition affecting competency, and if so, whether the minor is incompetent as defined in § 709(a)(2). The Court shall bear the cost of this expert.

The Court shall set a JCST Hearing to review the JCST evaluator's report within 20 calendar days from the suspension of proceedings if the minor is detained and within 30 calendar days from the suspension of proceeding if the minor is not detained.

#### 1) Appointment and Duties of the JCST Evaluator

The expert shall be selected from the court's juvenile competency JCST evaluator's list and must be an expert in child and adolescent development who has training in the forensic evaluation of juveniles and is familiar with the competency standards and accepted criteria used in evaluating competence and the remediation of incompetency.<sup>3</sup>

When the Court orders a JCST evaluation, the Court shall immediately notify the JCST evaluator of the appointment. Minor's counsel and the district attorney shall send to the JCST evaluator any relevant information, including special education records and recent psychological testing reports, they believe will be of assistance in making a JCST determination.

If the minor is detained, the evaluation will take place at Napa County Juvenile Hall. If the minor is not detained, the JCST evaluator will schedule the appointment with the minor's parent or guardian.

Statements made to the appointed expert during the competency evaluation and statements made by the minor to mental health professionals during the remediation process, and any fruits of these statements, shall not be used against the minor in either juvenile or adult court.

The JCST evaluator will conduct the evaluation using tests that are designed to evaluate the minor's functional competency.<sup>4</sup> The JCST evaluator shall interview the minor and may choose to interview the minor's caretakers or other relevant persons.

If the JCST evaluator determines that more extensive testing is required than that provided for in a standard JCST evaluation, then the report should state the reasons for

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<sup>3</sup> The Judicial Council and designated stakeholders shall adopt a rule of court setting forth the training and experience required to qualify as an expert in the forensic evaluation of juveniles.

<sup>4</sup> It is the preference of the court that the Juvenile Adjudicative Competence Interview be used whenever feasible as this is a thorough juvenile CST guide that focuses on minor's functional competency.

the additional testing, whether the JCST evaluator is qualified to administer the additional tests and the cost for the proposed tests.

The JCST evaluator shall:

- Interview the minor and review all the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information.
- Consult with minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency.
- Gather a developmental history of the minor. If any information is unavailable to the JCST evaluator, he or she shall note in the report the efforts to obtain that information.
- Administer age-appropriate testing specific to the issue of competency unless the facts of the case render testing unnecessary or inappropriate.
- Be proficient in the language preferred by the minor, or, if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor.
- Opine in a written report whether the minor has the sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding and whether he or she has a rational and factual understanding of the proceedings against him or her.
- If the JCST evaluator concludes that the minor lacks competency, he or she shall opine on whether the minor is likely to attain competency in the foreseeable future.
- State the basis for the evaluator's conclusions.

The JCST evaluator shall submit a report, and three copies to the Court within two days prior to the date set for the JCST hearing. The Court will immediately provide the district attorney and minor's counsel copies of the report. However, if the Court ordered the evaluation not be disclosed to the court and/or the district attorney unless a doubt is expressed, then the JCST evaluator shall submit a report, and three copies, to minor's counsel at least two days prior to the date of the JCST hearing.

## 2) Developmentally Disabled Minor

If the JCST evaluator believes the minor is developmentally disabled, the court shall appoint the director of the Regional Center, or his or her designee, to evaluate the minor. The director, or designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act and shall provide the court with a written report informing the court of the determination. The court's appointment under this section shall not delay the JCST hearing.

### 3) Additional Qualified Experts

The district attorney or minor's counsel may retain or seek the appointment of additional qualified experts who may testify at the JCST Hearing. The expert's report and qualifications shall be disclosed to the opposing party at least five court days before the JCST hearing. Failure to disclose the expert's report and qualifications in a timely manner may result in an order for immediate disclosure, for contempt, or excluding the expert's report, or any other legal order.

If, after disclosure of the expert's report, the opposing counsel requests a continuance of the JCST hearing to further prepare for the hearing, the Court shall grant a request to continue the JCST Hearing on a showing of good cause for a reasonable amount of time.

#### **C. The JCST Hearings**

The question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert that the minor is incompetent.

##### 1) Initial JCST Hearing

At the Initial JCST Hearing, so long as the parties have received the JCST evaluator's report at least 48 hours before, the parties may (a) stipulate to the JCST evaluator's report, (b) submit on the JCST evaluator's report or (c) request a JCST Evidentiary Hearing. Either party may also retain or seek the appointment of an additional qualified expert in accordance with B(3), above.

If the parties stipulate or submit on the findings of the JCST evaluator, the Court shall receive the JCST evaluator's report into evidence to determine whether the minor is competent. The minor shall be presumed competent, unless proved by a preponderance of the evidence that he or is incompetent. The Court shall determine, for any minor under the age of 14 at the time of the alleged offense, whether he or she has the capacity to commit a crime pursuant to Penal Code §26. This finding shall be made prior to the determination of competency. If the court finds the minor incompetent to stand trial, the court shall determine whether the minor is likely to attain competency with appropriate mental health and education services.

If either party requests a JCST Evidentiary Hearing, the Court shall set that hearing fifteen calendar days after the Initial JCST Hearing. However, if either minor's counsel or the district attorney retains or seeks the appointment of an additional qualified expert, the parties acknowledge that the date for the JCST Evidentiary Hearing may need to be extended. In that case, the Court will hold the JCST Evidentiary Hearing as soon as practicable.

## 2) JCST Evidentiary Hearing

At the JCST Evidentiary Hearing the court shall receive relevant and admissible evidence to determine whether minor is competent. The Court may receive the JCST evaluator's report or reports from additional qualified experts, if any, only upon stipulation of the parties. The minor shall be presumed competent, unless proved by a preponderance of the evidence that he or is incompetent. The Court shall determine, for any minor under the age of 14 at the time of the alleged offense, whether he or she has the capacity to commit a crime pursuant to Penal Code §26. This finding shall be made prior to the determination of competency. If the court finds the minor incompetent to stand trial, the court shall determine whether the minor is likely to attain competency with appropriate mental health and education services.

## 3) Minor Found Competent to Stand Trial

Following the JCST Initial Hearing and/or JCST Evidentiary Hearing, if the Court finds the minor competent, it shall reinstate the delinquency proceedings and proceed with the case. If the court or counsel believe that minor would benefit from a referral to the Department of Mental Health or Regional Center, it shall order minor's counsel or Probation to request an assessment.

## 4) Minor Found Incompetent to Stand Trial

Following the JCST Initial Hearing and/or JCST Evidentiary Hearing, if the court finds the minor incompetent to stand trial, and the petition contains only misdemeanor offense, the petition shall be dismissed.

If the court finds the minor incompetent to stand trial and the petition alleges at least one felony offense, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed. If the minor is detained, the court shall set a Remediation Planning Hearing within 15 calendar days. If the minor is not detained, the court shall set a Remediation Planning Hearing within 30 calendar days. (If the minor is not detained, the court should again explore whether the case can be resolved informally.)

The court shall order the County's Department of Mental Health and Probation to evaluate the minor and submit a joint Remediation Planning Report to the court. The report should specify whether the minor is a Regional Center client (or has been referred to Regional Center for an eligibility assessment), whether the minor is receiving special education services and whether the minor is receiving services from the Department of Mental Health. The joint report should further address what mental health and education services are available to help the minor attain competency. The report should also address whether the minor's needs can best be met safely in the home, community or an open residential placement. If the Department of Mental Health and Probation conclude

that minor's needs can only be met safely in a locked facility, the report should also assess whether the minor could receive services or placement through the Lanterman-Petris-Short Act (LPS Act).<sup>5</sup>

While proceedings are suspended, the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. The court may also rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to:

1. Motions to dismiss
2. Motions by the defense regarding a change in the placement of the minor
3. Detention hearings
4. Demurrers
5. Motions to join governmental agencies that may have failed to meet a legal obligation to provide services to the minor. § 727(b)(1)

#### **D. Remediation Planning Hearing**

At the Remediation Planning Hearing, the court should first consider whether there is a substantial probability that the minor will attain competency in the foreseeable future.

##### 1) If Minor is Likely to Attain Competency in the Foreseeable Future

If the court finds that there is a substantial probability that the minor will attain competency in the foreseeable future, the court shall order Probation and the Department of Mental Health to begin immediate coordination of mental health and/or education services to help the minor attain competency. If the finding of incompetency was based upon minor having a developmental disability, the court shall also refer the minor to Regional Center for assessment and services. No minor should be ordered to participate in a remediation program unless there is a likelihood that additional services would help the minor attain competency in the foreseeable future.

Providing services to attain competency may include the coordination of services from the Department of Mental Health, Regional Center, education agencies and any other entity that has an obligation to provide services to the minor. At the recommendation of Probation and/or the request of counsel, the court should consider joining such entities in the court proceeding pursuant to §727(a) for adjudged wards. If the minor has not been adjudged a ward, the court may issue subpoenas for persons or agencies who have an obligation to provide services to the minor.

The case shall be set for a Remediation Hearing within six months from the JCST Hearing. The court shall review a detained minor's remediation progress every 30 days and a non-detained minor's progress every 45 days. The need for a minor's continued

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<sup>5</sup> §5000, et seq. (specifically §5150, et seq. and 5350, et seq.)

detention is always at-issue and alternatives to detention should be explored by the court and counsel. The first period of remediation services shall not exceed six months from the finding of incompetence. If further remediation services are ordered (see Section E) the total remediation period shall not exceed one year from the finding of incompetence.

Pending attainment of competency, if the minor is in custody, the County Mental Health Department shall provide the court with suitable alternatives for the continued delivery of remediation services upon release from custody. A finding of incompetency alone shall not be the basis for detention. The court shall consider appropriate alternatives to juvenile hall confinement. The Court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement. The court shall review the appropriateness of minor's detention at every hearing after a finding of incompetency.

2) If the Court Cannot Determine Whether the Minor is Likely to Attain Competency in the Foreseeable Future

If the court cannot determine whether the minor is likely to attain competency in the foreseeable future, then it may dismiss the case, or order remediation services for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future and is consistent with the timelines in section D(1).

3) If Minor is Not Likely to Attain Competency in the Foreseeable Future

If the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, it shall dismiss the petition. The court may invite persons and agencies with information about the minor, including, but not limited to, the minor and his or her attorney, the probation department, parents, guardians, or relative caregivers, mental health treatment professionals, the public guardian, educational rights holders, education providers, and social services agencies, to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. If appropriate, the court shall refer the minor for evaluation pursuant to § 705 and § 6550 for wards or pursuant to § 705 and Penal Code § 4011.6 for non-wards. (See California Rules of Court 5.645).

**E. Remediation Hearing**

The Remediation Hearing shall be an evidentiary hearing to determine whether the minor has been remediated or is able to be remediated in a timely manner. (In lieu of an evidentiary hearing, the parties may stipulate to the recommendation of the Department of Mental Health and Probation.) Prior to the Remediation Hearing, the Department of Mental Health and Probation shall submit a joint report (the "Remediation Report") that documents the specific services provided to the minor, whether such services have been successful in helping the minor to attain competency, and, if not, whether further efforts are likely to succeed. The Court may receive the Remediation

Report into evidence if the parties so stipulate. Minor's counsel or the district attorney may submit additional relevant and admissible evidence to help the court make a determination as to whether the minor has attained competency or whether further efforts are likely to succeed.

If the Remediation Report opines that the minor is competent to stand trial, then the burden is on the minor to prove by a preponderance of the evidence that he or she remains incompetent to stand trial. If the Remediation Report opines that the minor is incompetent to stand trial, then the burden is on the district attorney to prove by a preponderance of the evidence that the minor is competent to stand trial. The provisions of section C, above, shall govern the Remediation Hearing, unless in conflict with the specific rules governing this section.

At the conclusion of the Remediation Hearing, if the court believes that minor has attained competency, it shall reinstate juvenile proceedings. If the court finds that minor is not likely to attain competency in the foreseeable future, it shall follow the process set forth in section D(3), above and dismiss the petition.

If the court finds that further efforts at rehabilitation will likely be successful within six months, the Court shall order the minor returned to the remediation program and set a second Remediation Hearing within six months. Periodic reviews shall be scheduled as set forth in section D(1). In no event shall the total remediation period exceed one year from the JCST Hearing. Nor shall the total period of secure confinement exceed six months unless the court makes the findings set forth in 709(h)(5) and even when those findings are made, the period of secure confinement may not exceed one year from the JCST Hearing, unless the petition alleges a 707(b) offense in which case secure confinement may not exceed 18 months.